

Title 29, Code of Federal Regulations Citations

Title 29 of the Code of Federal Regulations (CFR) § 1910.119 contains standards and requirements for preventing or minimizing the consequences of catastrophic releases of toxic, reactive, flammable, or explosive chemicals. The CFR defines the roles and responsibilities of employers to ensure that the safety of both plant and contractor employees are considered. The following is a detail description of the sections cited in our report and the corresponding CFR requirement.

Occupational Injuries. Title 29, CFR § 1904.5 requires the recording, reporting, and investigation of occupational injuries. Occupational injuries are defined as injuries or illnesses, which result in: lost workdays; or requiring medical treatment administered by a physician or by registered professional personnel under the standing orders of a physician.

Training. Title 29, CFR § 1910.119(b) requires that each employee shall be trained on safety health standards, emergency operations, emergency shutdown, and safe work practices. Additionally, employers must document that each employee has received required training.

Employee Participation. Title 29 CFR § 1910.119(c) requires employers to involve employees in conducting hazard analyses and ensure that related data is readily accessible to all workers at the Plant.

Process Safety Information. Title 29, CFR § 1910.119(d) requires the employer to compile written process safety information that enable persons who are exposed to hazardous chemicals to identify and understand the related hazards, possible injuries or related illness that can ensue from exposure to such chemicals and recommended treatments in case of contact. Additionally, employers are required to make safety procedures readily accessible to all workers at the plant and make an annual certification that they are current and accurate.

Process Hazard Analysis. Title 29, CFR § 1910.119(e) requires employers to perform an initial hazard analysis to identify, evaluate, and control hazards involved in the wastewater process. At least every five years, after the completion of the initial process hazard analysis, the analysis is to be updated and revalidated on a routine basis to ensure that it is consistent with the current process. Additionally, employers are required to establish systems to promptly address findings, prepare a written plan for completing actions, and communicate the results of the evaluation and planned corrective actions to all workers at the plant.

Title 29, Code of Federal Regulations Citations

Operating Procedures. Title 29, CFR § 1910.119(f) requires employers to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information.

Contractors. Title 29, CFR § 1910.119(h) requires employers "...when selecting a contractor, shall obtain and evaluate information regarding the contract employer's safety performance and programs...to inform contract employers of the known potential fire, explosion, or toxic release hazards related to the contractors work and the process...to periodically evaluate the performance of contract employers in fulfilling their obligations...to explain to contract employers the applicable provisions of the emergency action plan..."

Incident Investigations. Title 29, CFR § 1910.119(m) requires the employer to investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release of highly hazardous chemicals in the workplace.

Emergency Planning and Response. Title 29, CFR § 1910.119(n) requires employers to establish and implement an emergency action plan for the entire plant.

Compliance Audits. Title 29, CFR § 1910.119(o) requires employers to perform an audit of their safety program every three years to verify that the procedures and practices developed under the standard are adequate and are being followed. Additionally, employers are to promptly determine and document an appropriate response to each of the findings of the compliance audit, to ensure that deficiencies have been corrected. Lastly, employers are required to retain the two (2) most recent compliance audit reports.

Hazardous Chemicals. Appendix A to Title 29 CFR § 1910 contains a listing of toxic and reactive highly hazardous chemicals, which present a potential for a catastrophic event or above the threshold quantity.

Potable Water. Title 29, CFR § 1910.141(b)(1)(i) states: "Potable water shall be provided in all places of employment, for drinking, washing of the person, cooking, washing of foods, washing of cooking or eating utensils...."

Toilet and Washing Facilities. Title 29, CFR § 1910.141(c) and 1910.141(d) requires that "...toilet rooms...shall be provided in all places of employment..." and "Washing facilities shall be maintained in a sanitary condition."

Title 29, Code of Federal Regulations Citations

Fire Extinguishers. Title 29, CFR. § 1910.157(e)(1)(2) and (3) provides (1) The employer shall be responsible for the inspection, maintenance and testing of all portable fire extinguishers in the workplace. (2) Portable extinguishers or hose... shall be visually inspected monthly. (3) The employer shall assure that portable fire extinguishers are subjected to an annual maintenance check... The employer shall record the annual maintenance date and retain this record for one year after the last entry or the life of the shell... the record shall be available....”

Section 1910.157(f)(2) provides: “The employer shall assure that portable extinguishers are hydrostatically tested at the [specific] intervals....”

Machine Guarding. Title 29, CFR § 1910.212 (a) requires one or more methods of machine guarding to be provided to protect the operator and other employees in the machine area from hazards such as those created by point of operation.

Ladder Safety. Title 29, CFR § 1910.25 requires employers to identify ladders and implement a program to ensure all ladders are maintained in good condition.

Personal Protective Equipment. Title 29, CFR § 1926.28(a) states that the employer is responsible for requiring the wearing of appropriate personal protective equipment in all operations where there is an exposure to hazardous conditions.



DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

5000 OVERLOOK AVENUE, S.W., WASHINGTON, D.C. 20032

October 30, 2000

BY REGULAR AND ELECTRONIC MAIL

Charles C. Maddox, Esq.
Inspector General
717 14th Street N.W.
Washington D.C. 20005

RE: Draft Management Review DCWASA
Project OIG-00-2-03LA

Dear Mr. Maddox:

I write to make specific comments on the seven recommendations contained in the Draft Final Report on the Management Review of portions of the operations of the District of Columbia Water and Sewer Authority (Blue Plains). Comments made in **this letter should be read in conjunction with the comments made and the materials attached to my prior letter of September 22, 2000.**

I wish to acknowledge the exit conference, which was held October 11, 2000, and also respond today to those issues identified to be "outstanding" at that conference. Each recommendation in the draft report is addressed in order.

1. *Address and adequately resolve all outstanding recommendations identified in its PSM Audit, and correct all identified deficiencies reported in the OIG MARs, D.C. Fire and EMS Report, and D.C. OSHA Report.*

Recommendations contained in the Process Safety Management Audit (PSM) that are considered appropriate for Authority operations will be implemented in a manner consistent with the current Authority work plan, approved budget and Capital Improvement Plan. You may be assured that every recommendation in the PSM has been evaluated. (See: Tab 3 of Exhibit B of September 22, 2000 letter¹).

All circumstances noted in MAR 00-A-06 have been evaluated and addressed in the manner the Authority has considered appropriate. Please note pictures evidencing current housekeeping efforts at Tab 8. Please also note with respect to MAR 00-A-09, in prior correspondence we have confirmed that all water coolers that exhibited elevated lead levels have been replaced. In fact, all Halsey Taylor fountains on the plant have been replaced

¹ All subsequent references to tabs and exhibits in this letter are references to attachments to my prior correspondence of September 22, 2000.

Charles C. Maddox, Esq.
RE: Draft Management Review DCWASA
Project OIG-00-2-03LA
October 30, 2000
Page 2 of 5

irrespective of any findings of high lead content in the sampling data. We have also provided members of your staff with results of testing performed in response to the request made in MAR 00-A-09.

With respect to "deficiencies" noted in the "D.C. Fire and EMS" Report², it must be made clear that the Authority has not received any notice from the Fire Marshal regarding the described conditions. Moreover, as demonstrated in my correspondence of September 22, 2000, few if any of the "deficiencies" described in the referenced document are applicable to Authority operations. (See Tab 7 Exhibit A). Accordingly, correcting the "deficiencies" noted in the document is not an appropriate course of conduct in this circumstance. Be assured, however, that fire code compliance has been and will remain a priority of the Authority.

With respect to the D.C. OSHA report, you will note that responses describing actions taken regarding each OSHA notice appended to the draft report can be reviewed at Tab 7 Exhibits B-F. The responses were delivered to DC OSHA in July of this year. No responses from DC OSHA have been brought to my attention since that time, so it is my assumption that our responses were favorably received. In a related matter, the Authority plans to have all new safety procedures finalized by November 30, 2000.

2. *Perform tests necessary to determine the quality of drinking water at the Plant. Tests should address lead and bacteria content as well as the report of backflow siphonage. Additionally, make potable water readily available to all employees.*

Potable water is available to all employees. Test results have been made available to your staff as indicated in the preceding paragraph

3. *Amend testimony provided to the Committee on Public Works and the Environment to set forth the correct amounts of training provided to WASA employees to date and the status of WASA's training database. Additionally, formally inform EPA of necessary revision to its Tri-Annual Risk Management Plan previously submitted to accurately reflect WASA's emergency response plan, related drills conducted and training provided. Lastly, submit a revised occupational injury log to OSHA for the previous two reporting periods that accurately reflect the number and type of injuries and illnesses reported at WASA.*

² (Memorandum from Adrian Thompson to Thomas Tippet, February 9, 2000, describing inspections conducted by Inspector Robert Smith February 7-8, 2000.)

Charles C. Maddox, Esq.
RE: Draft Management Review DCWASA
Project OIG-00-2-03LA
October 30, 2000
Page 3 of 5

After having reviewed the tapes of Committee proceedings, it is our conclusion that there is no need to amend testimony before the Committee on Public Works and the Environment. Our records reflect that there was no testimony given at the February 16 2000 hearing regarding details of a training database or amounts of training given. Even if such testimony was given, I am sure that it was delivered with the intention to be completely accurate. More importantly, the Authority participates in oversight hearings called by the committee on a regular basis and always employs best efforts to completely respond to matters raised by the committee.

The Authority is also in regular and routine contact with the Environmental Protection Agency on a number of issues. You may be assured that appropriate discussions regarding submissions made to EPA, including the Tri Annual Risk Management Plan will continue in accordance with federal requirements. Please note, however that prior submissions have been adequate to meet applicable requirements.

WASA's Safety Office has updated the Authority's Risk Management Plan. This plan is separate from the Tri Annual Risk Management Plan and has been developed for the Authority's internal use. There is no requirement that the Tri Annual Risk Management Plan include revisions to the internal Emergency Response Plan.

Lastly, we take exception to the inference that previous reports of OSHA injuries were not accurate and have explained to members of your staff the manner in which reports are generated. We will, however evaluate reporting protocols to see if improvements can be made.

4. *Document justification for executive level bonuses and other incentives paid to employees and provide such documentation to the OIG for the calendar years of 1997 - 2001.*

On October 20, 2000, documentary materials were provided to members of your staff in support of this recommendation with the hope that the recommendation would be modified after careful review. I am hopeful that the final report will accurately reflect the Authority's decision not to allow the private use of agency vehicles was made when a federal mandate, not specifically applicable to the Authority, was made applicable to other agencies in the District government. I am also hopeful that the final report will recognize the distinction between deferred compensation and incentive pay.

5. *Establish controls to ensure that new training and MMS systems provide for contain elements.*

Charles C. Maddox, Esq.
RE: Draft Management Review DCWASA
Project OIG-00-2-03LA
October 30, 2000
Page 4 of 5

Each system will be implemented so as to meet the Authority's needs and to integrate with other Authority systems.

- 6. Recommendation to the Board of Directors – Establish a direct link between the Director of Occupational Safety and Health and the Board by requiring WASA's Safety Committee to report directly to the Board.*

WASA management does not favor creating a direct reporting relationship between the Safety Office/Safety Committee and WASA Board of Directors. The General Manager reports all significant and developing issues to the Board of Directors orally and in writing on a monthly basis. Often these reports have included matters related to safety as well as the recent activities of the Office of Safety. This has proven to be an efficient and effective method of communication.

However, after consideration of your comments, I have decided that in the future, the General Manager will address any matters concerning safety to the Operations Committee of the Board of Directors. The Operations Committee is comprised of members of the Board of Directors. It reports to the full board on a monthly basis. This issue has also been put to the Vice Chairman of the Board of Directors³ who may respond under separate cover.

- 7. Recommendation to the Director of Employment Services – Review funding and staffing to support enhancements needed and pursue legislative action to strengthen regulatory enforcement.*

This recommendation is not addressed to WASA management and is in our view, inappropriate for inclusion in a management review of another agency. However, as previously stated, if it is determined, after appropriate study that enhanced enforcement authority should be conferred upon the DC OSHA, we would support the concept.

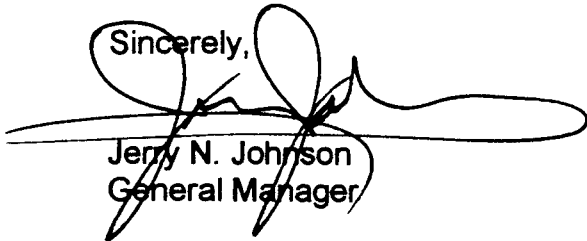
My hope is that this adequately responds to the recommendations in the draft report. Please accept my appreciation for the considerable work of your staff in this effort.

³ Ron M. Linton, former Chairman of the Board resigned, effective September 30, 2000. Under applicable rules, the Vice-Chairman serves in the absence of the Chairman.

Charles C. Maddox, Esq.
RE: Draft Management Review DCWASA
Project OIG-00-2-03LA
October 30, 2000
Page 5 of 5

Please also know that my prior offers to make myself or any other member of my staff available to clarify any questions regarding any issue that is the subject of your review.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry N. Johnson", is written over a horizontal line. The signature is stylized with a large loop at the end.

Jerry N. Johnson
General Manager

**DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY**

5000 OVERLOOK AVENUE, S.W., WASHINGTON, D.C. 20032

September 22, 2000

Charles C. Maddox, Esq.
Inspector General of the District of Columbia
717 14th Street N.W.
Fifth Floor
Washington D.C. 20005

Dear Mr. Maddox:

This responds to your invitation to comment upon the draft Management Review (Project Number OIG-00-2-03LA) of the District of Columbia Water and Sewer Authority, issued August 31 and received September 1, 2000 ("draft report"). Thank you for your one week extension of time in which to provide comments. We look forward to assisting in the development of a thorough, accurate and balanced final report relating to the nearly eight-month long investigation of the Blue Plains Advanced Wastewater Treatment Plant ("Plant"), and ancillary issues.

As the draft report recognized, the Plant is the "largest advanced wastewater treatment facility in the world." The Authority's management, as well as its dedicated staff, have maintained a wastewater treatment facility that is fundamentally safe and secure, fiscally and environmentally responsible and continually responsive to the needs of the community it serves.

Indeed, the D.C. Emergency Management Agency Report on DC-WASA (November 5, 1999) concluded at Page 5 that "the District does not believe there is an imminent threat of a catastrophic disaster at Blue Plains".

The following comments are made for the purpose of providing information that will be of assistance in developing a final report that reflects not only the alleged "problems" of the Authority but its significant achievements as well. Accordingly, I renew my request for the fulfillment of your earlier commitment for an exit conference before the final report is issued.

The attached document can serve as a template for discussion at that exit conference. Our review of the draft has revealed a significant number of statements that either do not reference supporting documents or are not otherwise supportable by relevant or

current facts. Because a number of issues and assertions raised in the draft report lack any documentation, I have had to make certain assumptions in the development of the attached comments. An exit conference will provide a forum to clarify many of the issues and assumptions in your draft report as well the assumptions made in the attached comments.

The work of your office is a valuable management resource. You may be assured that, notwithstanding our ultimate agreement or disagreement on the final report, new issues that were discovered in your work will be acted upon in a manner that will result in improved safety and efficiency of operations. We may, however, continue to disagree on some minor issues and methods of implementation.

Every significant element of each finding in the draft report is the subject of a comment. Hence, the length of the document. This approach was taken so that your staff can address all issues with specificity. Finding 2, "WASA's Use of Resources and Assets" is addressed first because resolution of issues raised there should not be complicated. See Tab 1.

The following is offered in response to **specific issues** described in your letter.

- A. There are deficiencies associated with WASA's safety program that include insufficient policies and procedures, training, and staffing.*

Elements of WASA's safety program that reflect progress are training and staffing. (See Tab 6) A comprehensive set of policies has been drafted and will be implemented shortly.

At several points the draft report echoes prior recommendations made by consultants that were hired by the Authority. All prior consultant's recommendations have been considered by and are being acted upon by the Authority. Not all of the consultant's suggestions were accepted, but all were considered. Detailed information on the state of training, staffing and procedures is included for your consideration at Tab 6.

- B. We also determined that WASA was not in compliance with safety and health requirements. In addition, previously reported conditions of safety and health violations continued to exist at WASA.*

The first statement is too general to be instructive. Specific references to standards should be included in the report wherever possible. We also strongly disagree that previously reported conditions of safety and health violations continue to exist at WASA. Tab 8 contains photographs of the same areas photographed in the draft report, which show conditions at variance with the later statement.

C. Factors contributing to these conditions include management's focus on its Capital Improvement Plan, while important, has diverted much needed energies away from establishing and implementing its safety program.

The Capital Improvement Plan is vital to continued performance of the Authority's statutory mission and the health of citizens of the District, surrounding jurisdictions and the environment. Several decades of neglect of capital projects contributed to the creation of WASA and its mandate to create separate procurement, personnel, and payroll and benefit systems. The importance of this responsibility cannot be minimized. Each of these special powers was given so that WASA could rebuild the world's largest wastewater treatment plant and continue to serve the region while in continuous operation and staying in compliance with local and federal permit requirements.

The effort to develop and implement the Capital Program has not resulted in any diversion from the equally important mission of safety. The entire organization is working to create a culture of safety and progress is being made. A safety department has been created. Together with the Office of Training, it coordinates regular and routine safety training. The draft report quotes inaccurate statistics on the number of classes held and the types of training that has been offered and required. See Tab 6

The expression of disagreement as to the pace of improvement in certain areas of safety is a proper subject of comment, but to suggest that management diverted resources in preference for another priority is not accurate as is demonstrated through budget actions, service procurements, staffing, and other activities further described in the attachments.

D. The absence of any regulatory enforcement remedies enabling the assessment of penalties for noncompliance with laws and regulations.

We support, with emphasis, the need to review the funding and staffing of the D.C. OSHA office to determine the need for enhancements to increase effectiveness. We could also support the concept of appropriate legislation if legislation is warranted. The report indicates that this suggestion is made to the Director of Employment Services. This suggestion should be made directly to the Department, the Council or some other appropriate body, and not be made a part of findings in the WASA Review. Moreover, the suggestion that a lack of enforcement has promoted non-compliance by the Authority is not supported by the facts.

E. We believe these conditions have jeopardized the safety and health of workers and may have contributed to an increase in injuries and costs for workers compensation and other insurance related premiums.

The "belief" stated is not supportable by the facts. An analysis of the 1999 Accident and Injury Claim Assessment establishes that the Authority's Risk Management Plan has been exceedingly effective. Since March 2000, the Authority's frequency rate for compensation claims per \$1,000,000 of payroll has dropped 33%, the loss rate per \$100 of payroll has dropped 15%, and the disability rate per \$1,000,000 of payroll has decreased by 12%. Details are provided at Tab 1.

F. Other Matters

The following conclusions stated in your August 31 letter deserve further review:

- *WASA paid in excess of \$566,000 for consultant reports of its safety program that reported findings of a repeat nature.*

Several consultants have been retained to evaluate many aspects of plant operations. Some were retained to establish a baseline from which a viable safety program could be developed to assist in the development of policies procedures, and to conduct appropriate training, as well as programmatic implementation. They were also retained to respond to newly imposed federal reporting requirements. The findings were not of a repeat nature, and their work supplements that of WASA staff.

- *WASA's costs related to workers compensation claims exceeded industry standards by approximately \$741,000 for calendar year 1999. Costs such as these can recur until WASA meets comparable industry standards.*

This conclusion is not drawn from an "apples to apples" comparison. The draft report contains one reference to industry benchmarks. That reference is incorrect. Citation is made to the "waste management" industry which is clearly different from wastewater treatment operations. Examination of wastewater treatment facilities, none of which are comparable in size to Blue Plains, yields a different result. See Tab 1.

- *WASA failed to use the most cost-effective measures when providing safety training to its workers. We determined that identical training could have been provided at a savings of over \$149,000. Comparable savings can continue to be realized.*

The courses referenced were not as comprehensive as those currently being offered and were not offered as part of a training regimen specifically designed for Blue Plains.

- *WASA did not correct safety and health violations that have been reported repeatedly and can carry associated fines and penalties of \$3,661,000.*

The majority of violations that support this conclusion either do not apply to the Authority or apply to quantities of materials that exceed quantities of materials that are utilized by the Authority. See Tab 7.

- *Bonuses and other related employee benefits estimated at \$123,653 were paid to three members of WASA's executive corps without adequate justification or documentation.*

The Employment Agreements which are at issue set forth in significant detail the terms of executive compensation, including the on-going methodology by which bonuses and other incentives will be paid. Written performance appraisals were completed for each of the three managers which fully document as basis for bonus payments. The draft report mischaracterizes deferred compensation as bonus income, bonus payments were made for FY 1998 only, and were a total of \$39,653 for the three managers. The draft report also fails to recognize WASA's strict observance of Congressional restrictions on the private use government vehicles.

- *WASA paid employees gain sharing bonuses in excess of \$575,000 based on questionable performance measures and without adequate justification that established goals had been achieved.*

The draft report states that a goal was "completing 50 percent of planned work" and offers that "only completing 50 percent of planned work could be viewed as low". This reference misstates the goal. The goal was that 50 percent of repair work be planned in advance and was negotiated with employees to promote efficiency in maintenance activities and increases the ratio of preventive maintenance over reactive repair work.

All goals and resultant activities were subject of an audit that excluded over \$746,000 (56%) based on the pre-defined evaluation criteria and goals which were not met. See detailed discussion at Tab 10.

Charles C. Maddox, Esq.
September 22, 2000
Page 6

The draft report seems to assume the absolute validity of the November 5th Washington Post story on Blue Plains Chlorine Safety and offers a critical assessment of WASA activities. However, there is no mention of the associated independent professional reviews undertaken by the USEPA, the Department of Transportation or OSHA. Since their findings were positive, it is disappointing that this balance is missing and I do hope it will be addressed in the final report.

One other general assertion of the executive summary deserves comment. The Executive Digest of the draft report expresses the opinion that the "climate of management" was "defensive and non-responsive". Two significant examples of conduct were cited: insistence on attending interviews (page 4); and forcing the necessity to subpoena certain information (page 4).

You and I discussed the issuance of subpoenas. We agreed that issuance of subpoenas was required in order to honor the Authority's statutory duty not to disclose records that contained information on medical condition of individual employees and the social security numbers of employees who have filed workers compensation claims. We agreed that a subpoena would provide the Authority and the affected employees protection against privacy invasion. **This was an example of cooperation, not non-responsiveness.**

The choice to include requests for information about other matters, some of which had already been obtained from other sources or compiled or maintained by other sources (i.e. payroll records) was a choice made exclusively by your staff. I note that in every instance your staff was directed to the proper custodian of documents which were requested. All information subject to subpoena was provided in a timely manner.

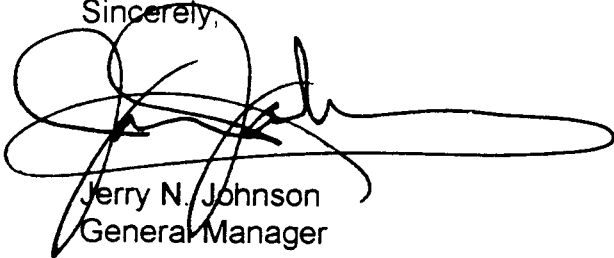
Authority staff also communicated that it desired to attend interviews of managers requesting such attendance and no initial objection was expressed. The Authority never insisted that a manager attend interviews with employees who were not managers. Second, the request to attend management interviews was based on the need to make sure Authority could coordinate the delivery of complete information to aid your effort, not control the result. I received reports from managers that an accusatory tone was often assumed by your investigators. I also point out that our request to be present at management interviews was abandoned when it met resistance from your staff.

Finally, with respect to the characterization that management was "resistant" to implementing corrective actions, I note that all recommendations made by your office in the formal management alert which were consistent with improved operations and safety were implemented.

Charles C. Maddox, Esq.
September 22, 2000
Page 7

It is my hope that your review of the attached comments will have a positive impact on the final report. Please also accept my appreciation for the hard work of your staff over the winter, spring and summer months.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry N. Johnson", with a long horizontal flourish extending to the right.

Jerry N. Johnson
General Manager

c: Ron M. Linton, Chairman, WASA Board of Directors
Gregory P. Irish, Director, Employment Services

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services



Gregory P. Irish
Office of the Director

MEMORANDUM

TO: Charles C. Maddox, Esq.
Inspector General, OIG

FROM: Gregory P. Irish
Director

DATE: OCT 31 2000

SUBJECT: OFFICE OF OCCUPATIONAL SAFETY AND HEALTH

This is in response to your August 31, 2000 correspondence concerning the Draft Report on the "Management Review of the District of Columbia Water and Sewer Authority (WASA)," as it pertains to the District's Occupational Safety and Health (OSH) Program.

Certainly the Department of Employment Services (DOES) recognizes the shortcomings of and the need to strengthen the District's OSH program. Over the years many actions have transpired in attempts to improve this critical program to a degree where there would be assurances of a safe and healthy environment for employees and general users of District facilities. Although objectives have not been achieved, DOES plans to continue positive efforts to establish and implement a highly efficient and effective program.

For informational purposes, the following briefly describes operations of the program and summarizes activities and/or processes that have negatively impacted an ability to move forward with enhancements as well as innovative designs:

The "District of Columbia Occupational Safety and Health Act of 1988" provides the legal authority for operations of the OSH program. The *public sector* program is charged with conducting workplace inspections of District Government facilities, investigating causes of occupational injuries or illnesses, responding to employee complaints and performing other related tasks. [The *private sector* program is protected by Federal enforcement of national laws, regulations and standards and it is supplemented by the D.C. Consultation Program, which is 90 percent federally funded. Under this program, on-site consultation services are provided to private sector employers.]

The **public sector** program is 100 percent funded through the District's appropriation. Historically, the OSH program has not been staffed to a level which would provide especially for an aggressive and timely approach to identifying and ensuring the abatement of hazards. Any increase in staffing has not been approved and more recently (during Fiscal Year 2001) there may be a requirement to further reduce its woefully inadequate staffing level.

Investigative findings of OSH are not enforceable; as such, the program is viewed to be a quasi, voluntary-type effort. Amendments to legislation (along with regulatory authority) are required to mandate full compliance with OSH standards and to impose sanctions for noncompliance.

Undoubtedly, there are costs associated with abatement of all currently existing conditions that may be a threat to the health or safety of D.C. Government employees. In the absence of a comprehensive review of working conditions in all facilities, it is impossible to estimate costs. Meanwhile, it would not be advantageous to the District to provide authority for the imposition of sanctions without first allowing each agency the opportunity to abate the conditions that impose hazards.

Under Public Law 91-596 of 1970, *Section 23G (a.k.a. 23(G) Grant)*, the U.S. Department of Labor may provide up to 50 percent funding to States (including the District of Columbia) where the Secretary of Labor has approved a comprehensive State Plan for implementing a public sector OSH program. While authority for granting funds is in place, currently there is inadequate and/or no money available to "new applicant" States under the 23(G) grant. As a footnote, a Region III official suggested that DOES and other officials, as appropriate, contact Congresswoman Eleanor Holmes-Norton with a request that she lobby Congress to include funding annually in the USDOL budget so that more States, including the District, can apply for grants.

Should funding become available under the 23(G) Grant, the District's State Plan **must** include provisions for enforcement. Also, any planned delayed effective date of program implementation would not be acceptable. Specifically, as any federal monies become available, States must be prepared to immediately implement their programs—including having the capability to match its 50 percent requirement.

Any effort to (1) enhance the current OSH program at least to a level where it is as effective as the Federal program and/or to (2) position the program for eligibility under a 50-50 match with the federal 23(G) Grant would require a comprehensive plan, with supporting phase-in schedules and funding designs.

In direct reference to your findings (as indicated in the Draft Report), DOES concurs. In essence, the OSH program lacks adequate staff to carry out its functions and there is no framework in which to operate an enforcement program. As was suggested in a management reform plan, the most feasible strategy would be to employ an approach of "gradually instituting enforcement under a phase-in schedule." In adopting this method, the exposure rate would be minimal since it would provide the District an opportunity to abate firsthand rather than to be penalized followed by abatement. At the forefront, however, is a requirement for adequate funding from the District appropriation and, as appropriate, from the USDOL.

Although prior year requests have not been granted (and in some instances reductions were made) during the process of developing the Fiscal Year 2001 budget, DOES will again seek additional funding for OSH. The outlook will be to obtain funding to, at least, fully implement Phase 1 of a Five Year Plan and a portion of Phase 2. For your ready reference, planned Phases, with brief explanations, are listed below:

- Phase 1* Increase staffing by 4 positions and increase nonpersonal services budget
- Perform additional workplace inspections and conduct more follow-up, by personal contact or through attestation, via mail. Begin to inform managers and supervisors concerning the impending legislative requirements through which penalties will be imposed for unabated violations.
- Phase 2* Continue more comprehensive inspections and identify and prioritize buildings which do not meet standards. Work directly with agency officials in aggressively abating hazards in the workplace. The major thrust will be to bring the District into compliance before an enforcement program is implemented.
- Draft amendments to the OSH Act, to include enforcement.
- Phase 3* Procure services of a consultant to assist in completing a comprehensive Grant Package to obtain any federal funding available for a Public Sector Safety Program under USDOL, 23(G) Grant. Services would also include developing an operational program model and a program implementation plan and schedule.
- Phase 4* Prepare and publish final implementing rules and regulations. Design and deliver a program for training of managers, supervisors and employees concerning the newly designed OSH program.
- Phase 5* Obtain approval from USDOL for a Public Safety Program.
- Implement a program of enforcement so that agencies with continuing unabated serious hazards would be subject to penalties and/or fines.

Thank you for providing me the opportunity to respond. Needless to say, in addressing OSH areas reflected in the Draft Report, DOES is unable to outline definitive, time-marked approaches for rectifying the problem areas. Varying predicaments, primarily involving the availability of District appropriations, continue to preclude the capability of revamping this important program. In the meantime, I hope that you will find the above information of interest and useful.

Again, please be assured that DOES is intent on transforming the OSH program and will again pursue funding to effect required beneficial changes, remaining cognizant that there will be increased costs attributable to abating hazardous conditions within various agencies. Also, DOES will continue to work closely with WASA to deliver as many OSH-related services as possible.

Let me know if I may be of further assistance in this matter.



DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
5000 OVERLOOK AVENUE, S.W., WASHINGTON, D.C. 20032

September 22, 2000

Charles C. Maddox, Esq.
Inspector General
Office of the Inspector General
Government of the District of Columbia
717 14th Street, N.W.
Washington, D.C. 20005

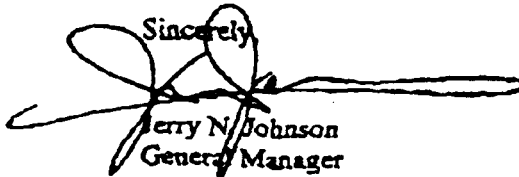
Dear Mr. Maddox:

This letter is written at the request of Mr. Ron Linton, Chairman of the Board of Directors for the District of Columbia Water and Sewer Authority. Following a lengthy conversation with Mr. Linton regarding the Draft Management Review (project number OIG-00-2-03LA) there was one matter that stood out as being very distinct and not fully addressed as a part of the draft report.

As pointed out by Mr. Linton, it appears that the report contains reference to the Washington Post article that dealt with chlorine safety at Blue Plains without having done very much in the way of an independent review of that issue. Mr. Linton took very strong exception to the lack of any mention of the EPA findings (attached) or the Department of Transportation and OSHA review of the rail line system and handling of chlorine. Each of these reviews/inspections concluded that there was no concern with WASA's proper handling of chlorine. In fact EPA was complimentary of WASA.

It is Mr. Linton's very strong desire that in the final draft of the report, specific mention be made of the Environmental Protection Agency's review and their findings as well as the review undertaken by the Department of Transportation in order to present a balanced view. He also expressed his interest and desire that we undertake the steps necessary to deal with any corrective actions pointed out in the report and not yet addressed.

Thank you very much for your attention to this issue.

Sincerely,

Jerry N. Johnson
General Manager

Attachment

c: Ron Linton, Chairman, WASA Board of Directors



MIKAL SHABAZZ <SHABAZZ.MIKAL@epa.gov> on 11/12/99
11:02:39 AM

To: bnavy82153@aol.com, Michael Marcotte/DCWASA@DCWASA
cc:

Subject: Update on Blue Plains WWTP Chemical Safety/General Duty Clause Audit -Forwarded

Date: Fri, 12 Nov 1999 10:58:48 -0500
From: MIKAL SHABAZZ <SHABAZZ.MIKAL@EPA.MAIL.EPA.GOV>
To: WRIGHT.DAVE@EPA.MAIL.EPA.GOV
Cc: CARNEY.DENNIS@EPA.MAIL.EPA.GOV, HODGKISS.KATHY@EPA.MAIL.EPA.GOV,
JARVELA.STEPHEN@EPA.MAIL.EPA.GOV, KIM.LENA@EPA.MAIL.EPA.GOV,
MCMALE.BILL@EPA.MAIL.EPA.GOV
Subject: Update on Blue Plains WWTP Chemical Safety/General Duty Clause Audit
Mime-Version: 1.0
Content-Type: text/plain
Content-Disposition: inline

Dave,

On the basis of our evaluation, from a CSA and GDC perspective, the facility does not pose an imminent and substantial endangerment to public health or the environment nor the threat of such.

If there was ever any truth to the allegations, DC WASA should be commended for doing the impossible given the short period of time between when the article appeared and our visit to generate six years worth of log book maintenance entries, develop years worth of maintenance work orders, develop operations and maintenance SOPs for both areas and the rail cars, produce training records for mechanical integrity and process safety management for operations and maintenance personnel including attendance and test scores for every participant and generating computer summaries of MWO records that corroborate with the MWOs. They have, admittedly, recently replaced all chlorine and sulfur dioxide sensors due to the current publicity but the records show that these sensors were serviced on a regular routine basis.

There is, however, a counter-terrorism concern, especially in light of the article, since adjacent to the facility is a Naval Research Lab and next to that the Bolling Air Force Base. Situated on the bank of the river at the facility are chlorine and sulfur dioxide rail cars that are publicly accessible from the river. This concern was brought to the attention of facility management and they plan to address this issue promptly. Also, there are some relatively minor issues concerning the inclusion of certain language within DC WASA's emergency response plans, e.g., the WRC, MCP and Federal OSC just to name a few.

As you know, the subject audit was recently conducted as a result of the November 5th Washington Post article entitled "City Ignores Blue Plains Safety Lapses." OSC Jarvela, Inspector McMale and I visited the facility on Tuesday, 11/9/99 and I continued the investigation on 11/10/99 to ascertain the validity of the allegations made in the post article. On 11/9, in addition to EPA Region III, there were also representatives from US DOT

and OSHA. DOT did not have any concerns at all about DC WASA's proper handling of the chlorine or sulfur dioxide rail cars.

During the course of our investigation, we: interviewed administrative, operations and maintenance management personnel and operations and maintenance employees technicians and contractor instrument technicians; reviewed operations and maintenance procedures and maintenance repair records; toured the chlorine and sulfur dioxide facilities; witnessed appropriate responses to alarms at a completely functioning control panel and; tested every single chlorine and sulfur dioxide sensor and they all worked. Furthermore, the maintenance records indicate that for several years there had been a proactive preventive maintenance program for all equipment including the sensors. Copies of typical maintenance work order were corroborated with the maintenance work order (MWO) status reports' computer summary printout.

A CSA report is currently being written and will be complete within the next two weeks.

As usual, it would be my pleasure to answer any questions you may have regarding this matter.

Mikal